

July 31, 2020

Via Email: ROMANNYSDChambers@nysd.courts.gov

The Honorable Nelson S. Roman
United States District Judge
U.S. District Court for the
Southern District of New York
United States Courthouse
300 Quarropas Street
Courtroom 218
White Plains, NY 10601

Re: *Shelton v. Lumico Life Ins. Co., et al.*, Civil Action No. 7:19-cv-6494

Dear Judge Roman:

I write on behalf of Defendant Lumico Life Insurance Company ("Lumico") in response to Plaintiff's filing of July 28, 2020, in which he requests that the Court set a Rule 16 conference. Dkt. 26.

By requesting a Rule 16 conference, Plaintiff is, for the second time, attempting to trigger discovery before all Defendants have answered or otherwise responded to the Complaint. Plaintiff made a similar attempt in his letter of November 22, 2019, to which Defendants responded on December 6, 2019. Plaintiff's most recent request and his request of November 22, 2019, are both untimely.

Rule 26(f) requires the parties to confer "at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)." Were the Court to set a scheduling conference, therefore, discovery would be triggered.

This is problematic because pending before the court is Defendant Assurance IQ, Inc.'s September 12, 2019 letter regarding a proposed motion to dismiss. Until such time as the court resolves the issues raised in that letter and potential subsequent motion, and all parties have answered or otherwise responded to the Complaint, Plaintiff's request for a conference should be denied. See Indiv. Prac. Rule 3(A)(ii) ("If a pre-motion conference is requested in connection with a proposed motion to dismiss, the request will stay the deadline for the requesting party to move or answer, and a new deadline will be set at the conference.").

Defendants are under no obligation to participate in premature discovery, and Plaintiff provides no basis, in his submission of July 28, 2020, or in his letter of November 22, 2019, to require premature discovery.

For these reasons, Lumico respectfully requests that the Court deny Plaintiff's request for a Rule 16 conference.

Respectfully submitted,



Lewis S. Wiener
Eversheds Sutherland (US) LLP

cc: Counsel of Record via e-mail